

PAUL S. BUNT, Esq.

February 23, 2015



Jeff KenKnight
U.S. Environmental Protection Agency
NPDES Compliance Unit
1200 Sixth Avenue, Suite 900 (OCE-133)
Seattle, WA 98101-1128

RE: July and August 2014 Suction Dredging Activity along the South Fork Clearwater River,
Hwy. 14, Mile Marker 39-40

Dear Mr. KenKnight:

I am responding on behalf of my clients, Lisa Grossman, John Ratley and Michael Walker, to your Notice of Violation and Request for Information regarding dredging activity on the South Fork Clearwater River in Idaho.

Since it is the position of the Environmental Protection Agency that the activity cited in the notice and the response to the request for information could, in the agency's opinion, result in criminal fines and/or imprisonment, my clients respectfully assert their right as set forth in the Fifth Amendment of the United States Constitution not to be compelled to be a witness against themselves. Therefore, they decline to provide the information requested in the Request for Information.

As to the violation of the Clean Water Act, alleged by the agency, the case law does not support the agency's position that dredging discharges pollutants, requiring a NPDES permit. I direct your attention to the United States Court of Appeals, District of Columbia Circuit opinion in the case of *National Mining Association, et. al. vs U.S. Army Corps of Engineers, et. al.* (1998) 145 F. 3d. 1399, 330 U.S. App. D.C. 329. In *National Mining Association* the court held that the Corps' rule that any redeposit, including incidental fallback, during dredging operations was subject to the permit requirements of the Clean Water Act exceeded the Corps' authority under the CWA.

In *National Association of Home Builders, et. al. vs U.S. Army Corps of Engineers, et. al.* ((2007) 2007 WL 259944 (D.D.C.)) the United States District Court, District of Columbia, held that the use of "mechanized earth-moving equipment" resulting in the discharge of "dredged or fill material" does not result in an activity subject to the permitting regime of the CWA.

Both cases specifically enjoined the Corps and the EPA from subjecting such activity to the permitting regime under the Clean Water Act.

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I invite you to seek counsel for a more detailed analysis of the agency's enforcement of the permitting regime in regard to suction dredging.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul S. Bunt", with a stylized flourish extending to the right.

Paul S. Bunt

CC: Lisa Grossman
John Ratley
Michael Walker
John Cardwell

SACRAMENTO CA 957

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